

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2016

Public Authority: Mill View Primary School
Address: Wealstone Lane
Upton by Chester
CH2 1HB

Decision (including any steps ordered)

1. The complainant has requested information from Mill View Primary School (the School) regarding the Forest School Committee.
2. The School provided some information to the complainant but redacted information under section 40(2) of the FOIA and for the remaining information stated this information was not held. The Commissioner has found that some of the information withheld under section 40(2) should be disclosed as outlined in the confidential annex attached to this notice. For the remaining information the Commissioner finds this information is not held.
3. The School must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. On 30 April 2015 the complainant wrote to the School and made the following request for information:

(Request 1) All agendas and minutes of meetings of the school's Forest School Committee.

(Request 2) All agendas and minutes of governors meetings relating to the conversion to an academy.

5. The School responded on 2 June 2015. With reference to request (1) it stated that all agendas and minutes for the Forest School Committee were not held.
6. In relation to request (2) the School did send the complainant all its agendas and minutes relating to its conversion to an academy. However, parts were redacted on the basis that this information was the personal data of third parties.
7. On 3 and 4 June 2015 the complainant wrote to the School to state his dissatisfaction with its response and to make his third request.
8. On 4 June 2015 the complainant made a further request to the School:
(Request 3) A copy of the risk assessment which was undertaken by Forest School Committee together with the full details of the position and credentials of the named individual that undertook this review.
9. On 26 June 2015 the School responded with an internal review stating that it did not hold the Forest School Committee agendas and minutes. However, it did provide agendas and minutes of governor body meetings, a time line of events, an email from the governors, action and management plan documents and a press release. The School also stated that the Governor's agendas and minutes were given to the complainant, but some information was redacted due to personal data. In relation to request (3) the School gave a copy of the risk assessment which was requested. However, the School stated that it was unable to give the position/credentials of the person who undertook the review as it was personal information.
10. The School provided a further response on the 9 October 2015 following a request from the ICO to reconsider the complainant's requests. The School upheld its first decision.
11. On 13 November 2015 the School gave the complainant details of the position and the credentials of the named individual who undertook the review.
12. The complainant is dissatisfied with the School's response. It has given a list of qualifications for the person in question, but the complainant feels the School has not given him all the information that it holds regarding the personal qualifications (such as certificates and documents). The complainant also feels that the School has not answered his question as to the level of certification obtained by this person.
13. The complainant also feels that the agendas and minutes of the governors should not be redacted.

Scope of the case

14. The complainant contacted the Commissioner on 10 July 2015 to complain about the way his request for information had been handled.
15. The complainant argued that he had not been presented with information relating to the Forest School Committee which he had requested. He also believed that the redacted information in the governor's agendas and minutes should be disclosed.
16. The complainant has also asked for the credentials/ qualifications of the named individual who conducted the review/risk assessment.
17. The Commissioner has therefore had to determine whether the School holds any information in regards to the Forest School Committee and if it was correct to redact information contained in the minutes of the Governors meetings. The Commissioner has also considered whether the School holds the actual copies of the qualifications to the complainant and if so if these should be disclosed.

Reasons for decision

18. Section 1 of FOIA states that:

"Any person making a request for information to a public authority is entitled: -

to be informed in writing by the public authority whether it holds information of the description specified in the request, and

If that is the case, to have that information communicated to him".

19. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complaint believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
20. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
21. The Commissioner has investigated this complaint by returning to the School and asking what searches they have conducted in order to

determine whether it holds any agendas or minutes of meetings from the Forest School Committee.

22. The School responded stating that the Forest School Committee was a volunteer led initiative and therefore there were no formal recorded agendas or minutes. The School conducted a comprehensive search to find any relevant information by searching electronically its server and all hard copies of any documentation relating to the Forest School Committee. It also held discussions with two members of the Forest School Committee who confirmed that no agendas or minutes were recorded.
23. The only information the School holds regarding the Forest School Committee is the action plan documents and a press release which have been given to the complainant. The School has also given the complainant a communication trail between the governors and the volunteer who set up the Forest School, agendas and minutes of the governor body meetings where the development of the Forest School is referred to and an email to the governors regarding the Forest School.
24. The Commissioner acknowledges the complainant's concerns, and he does consider that the circumstances of the case raise questions over the Forest School committee having no recorded agendas and minutes. The complaint provided evidence in an email dated 30 September 2014 stating that the School may have taken minutes for the Forest School Committee. However he notes that it was a volunteer led initiative and that the School has conducted comprehensive searches. Taking these factors into account, together with the details of the searches carried out by the School, the Commissioner is satisfied that on the balance of probabilities the information in question is not held.
25. The Commissioner has also looked at the credentials and qualifications of the named individual who under took the review. The School informed the Commissioner that it had supplied a list of qualifications/credentials to the complainant. The complainant was dissatisfied with the Schools response and felt that it did not answer his questions. The complainant wished to see the certificate/documents which he felt were held by the School. The complainant also wished to know the level of achievement by the named individual who conducted the review. The School has informed the Commissioner that the level achieved was level 3. This information has now been provided to the complainant. The School has also confirmed it does not hold any further information in regards to the qualifications other than what has already been provided to the complainant. The Commissioner considers that no further information is held, as the School would not be expected to hold the actual certificates.

Section 40 – personal information

26. Section 40 of FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
27. Taking into account his dual role as regulator of both the FOIA and the Data Protection Act 1998 (the "DPA") the Commissioner has considered whether the minutes from the Governors meetings would identify the named people.

Is the withheld information personal data?

28. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

"...data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual..."

29. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.
30. The information sought in the request was for minutes of meetings which contained living individual's names who are associated with the School. In other parts the redacted minutes refer to circumstances which would identify living individuals, i.e. children at the School. There are also circumstances within the minutes which, if they were to be disclosed, would identify the living individual's family circumstances and their private life.
31. The Commissioner is satisfied that the withheld information which names individuals, or sets out the circumstances which would identify individuals, is personal data in accordance with section 1 of the DPA.
32. However, the Commissioner has gone on to consider whether any of the redacted information can be anonymised. Having done so, he considers that, if only some of the information were redacted, this would render the remaining information anonymous and therefore not personal data. The information that he considers could be effectively anonymised is set out in the Confidential Annex attached. He has commented further on this information below.

Would disclosure breach the data protection principles?

33. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
34. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.
35. The School explained that the names would identify the individuals and therefore have an impact on their private lives. Also information relating to individual circumstances which is contained in the minutes would identify the persons and their private lives. The School also explained that the individuals would have a reasonable expectation that information relating to their backgrounds and personal circumstances would not be disclosed to third parties.

Reasonable expectations of the data subjects

36. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subjects. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
37. In this instance the Commissioner notes that the withheld information relates to private citizens, including children. Given the nature of the information, the Commissioner does not consider that these individuals would reasonably expect that their personal information would be placed into the public domain by way of disclosure under the FOIA.

Balance of legitimate interests

38. The Commissioner has gone on to consider whether the legitimate public interest in the disclosure of this information outweighs the rights and legitimate interests of the data subjects.
39. The complainant feels that the redacted information should be disclosed and does not accept that the redactions have been correctly applied. He explains that entire sections have been redacted instead of restricting redactions to only personal data.
40. The Commissioner has reviewed the minutes of the governors meetings, and (as noted above) considers that some of the information in question can be effectively anonymised. This information (detailed in the Confidential Annex) should be disclosed. However, in relation to the remaining information, the Commissioner notes that this identifies private citizens, including children. In the circumstances of the case he does not consider that there is a legitimate interest in the disclosure of this information into the public domain. As such this information should be withheld.

Right of appeal

41. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

42. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

**Rachael Cragg
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